

CAFO Draft Permit
8:10 p.m. December 1, 2005
Public Hearing @ Terrence Heights Civic Center
4009 Common Wealth Drive, Yakima, WA

The following actions took place October 19, 2005. The legal notice of this hearing was published in the WA state register issue number 05-50-109. A copy of the draft permit fact sheet and public hearing information were posted on the ecology CAFO web page. All conservation districts were directly notified of the draft permit hearing as well as public notices being directly mailed to 1,100 interested parties and are people who either currently have permit coverage or have had permit coverage within the last 5 years. Earlier this month a notice was mailed to an additional 70 existing dairy permit holders. Ecology also mailed out information to 2500 interested parties on the USDA mailing list.

Testimony

Jack Field
Washington Cattleman's Association
Yakima, WA

Questions and Comments:

Starting with the definition page, Appendix three, under the definitions, I would like to see the addition of the definition of a discharge, to give us a little clarity as we move through the permit and also references and reflects the second circuit courts recent ruling.

On definition 1.B. I would like to see a reference that would help us define crops of vegetation and forage growth. We could take a look at the current EPA reference to that as well.

Definition 3, second point, regarding AFO's and CAFO's, just to be sure we clarify throughout the permit when we are talking about a permitted CAFO that's noted that we don't interface permitted and non-permitted facilities. Also, if we could include any criteria, or list any of the tools that might be used in a potential listing for a designation of a AFO to a CAFO that would be beneficial for producers and that could be included in a fact sheet if that's not appropriate in the permit itself. I think that would handle a couple of points there.

On section S.2 Permit Coverage....if we could maybe take a look or attempt to clarify a little bit of the language that we are again only looking at those CAFO's that have a discharge, being those that require permit coverage, and do whatever we can to reference the second circuit and the fact that we're not necessarily regulating on potential.

S.2.B.1.c regarding Obtaining Permit Coverage. The public comment, Washington Cattle Association feels that the public comment on the aspect of the permit coverage is a unnecessary step. We feel those agencies that are charged with issuing, regulating and dispensing the permit should be more than adequate in determining the adequacy of a permit, thus not requiring public

comment. I realize that it's an aspect of the Clean Water Act, but we want to make sure that is on the record and recognized.

Section S.3.B.2 Nutrient Management Plan Updates. Wondering if we could have a little clarification on sub 2. It says, "A CAFO that reduces or changes the field area, specified in the Nutrient Management Plan, used for land application," that would require... I believe that would constitute an update. If we could clarify if we are talking about cultural practices, such as various cropping practices, or if that is actually changing the land that you would be applying or operating underneath the CAFO, maybe just a little clarification as to what we're explaining there.

Under the reporting aspect, S.4 and I think throughout S.4.B. Just to be sure that when we talk about those CAFO's and facilities required for the reporting and record keeping, that we specify those are permitted facilities. And the same thing goes to section S.3, Soil Monitoring.

Section S.7, Determination Coverage. We're happy to see section S.7.a where there is a definition and we do have the steps outlined as to how a facility may terminate coverage under a CAFO. We're happy to see that, for both the large and medium CAFO or designated CAFO's should they choose to no longer have permit coverage.

Again, general conditions, G.1, the Discharge Violations, a clear definition of a discharge would certainly assist us as we read through the permit and this was one area where that being listed in the definitions might assist us.

Under general conditions G.4, Right of Entry, sub e, Cattleman's Association would like to see if there's a way we could strike from that line, inspections, essentially inspecting on the potential of the discharge, realizing that we are trying to base this on the discharge of the actual event not necessarily the potential, or the watering if an event would occur.

G.9 under the Additional Monitoring, we'd just like, and I believe we have clarification now, but to insure the process or practice that must be gone through prior to Ecology making special rule or action on a permit, not to leave an operator in the blue there.

And again, clarification G.17 Penalties for Violations of the Permit, we had a section on willful and wanten violation, but it appears that we've omitted the other aspect of an upset that went without willful or wanten regard and would like to see that language of that included and allow comment on that prior to being including in the permit since we haven't had the opportunity to view that. And I would like to see if we can get some clarification on the third sentence, where it starts, "a fine up to \$10,000 per day and costs of prosecution," to see if this is the maximum or if this is on top of the federal daily limitation, which is, I believe \$27,500 per day, to see if we can get clarity on that so we have an idea what the maximum daily penalty per violation would be. I would ask that for both willful and accidental discharge and violation.

And I think at the end if there is kind of (?) in passing, we discussed this earlier, perhaps on the fact sheet if there be a way we could include the open paragraph from the preamble of the federal rule that outlines facilities that are not covered under the permit, such as non-point operations,

range and pasture based facilities, realizing that doesn't have any affect or bearing on the permit, but simply ads peace of mind for non-point, essentially grazing operations, to realize that they are not included under the permit. And secondly, we'd like to see if there's someway we could get language or maybe on fact sheet or appendix, some reference, if there's a way we could have the ability for first time offenders to hold penalties in advance, to try to work through the water quality issues prior to the permit, and I realize that comes with flexibility through the department and the permit. I'll go ahead and submit this as well, and with any questions, feel free to contact.

Hearing adjourned at 8:23 p.m.